



Introduction: The Need for a Philosophical Anthropology

Citation

Charles Fried, Introduction: The Need for a Philosophical Anthropology, 48 Ind. L. J. 527 (1973).

Published Version

<http://www.repository.law.indiana.edu/ilj/vol48/iss4/1/>

Permanent link

<http://nrs.harvard.edu/urn-3:HUL.InstRepos:13548821>

Terms of Use

This article was downloaded from Harvard University's DASH repository, and is made available under the terms and conditions applicable to Other Posted Material, as set forth at <http://nrs.harvard.edu/urn-3:HUL.InstRepos:dash.current.terms-of-use#LAA>

Share Your Story

The Harvard community has made this article openly available.
Please share how this access benefits you. [Submit a story](#).

[Accessibility](#)

7-1-1973

Introduction: The Need for a Philosophical Anthropology

Charles Fried

Harvard University School of Law

Follow this and additional works at: <http://www.repository.law.indiana.edu/ilj>



Part of the [Anthropology Commons](#), and the [Law Commons](#)

Recommended Citation

Fried, Charles (1973) "Introduction: The Need for a Philosophical Anthropology," *Indiana Law Journal*: Vol. 48: Iss. 4, Article 1.
Available at: <http://www.repository.law.indiana.edu/ilj/vol48/iss4/1>

This Article is brought to you for free and open access by the Law School Journals at Digital Repository @ Maurer Law. It has been accepted for inclusion in Indiana Law Journal by an authorized administrator of Digital Repository @ Maurer Law. For more information, please contact wattn@indiana.edu.



LAW LIBRARY
INDIANA UNIVERSITY
Maurer School of Law
Bloomington

INDIANA LAW JOURNAL

Volume 48

SUMMER 1973

Number 4

INTRODUCTION: THE NEED FOR A PHILOSOPHICAL ANTHROPOLOGY

CHARLES FRIED†

The purpose of this article is to set out the difficulties that beset the attempts to resolve the full range of questions raised by genetic counseling and other techniques growing out of the "new biology."¹ Perhaps the rights and obligations involved in genetic counseling (as opposed to some kind of therapy or other intervention) seem relatively straightforward. Some see the practice, indeed the profession, of giving advice about genetic disorders as related to the practice of doing something about such disorders. Today that means avoiding conception, perhaps deciding not to marry, or preventing the birth of a fetus at risk. But it could mean other things. It could mean state intervention to prevent the birth of genetically defective individuals. And, through the extension of the techniques of prenatal analysis—amniocentesis—it could lead to parental choice of the sex of the children they would allow to be born. So here, as everywhere in this area, we are right in the middle of the whole congeries of ethical and political problems raised by the new biology.

In general it is my belief that very little truly illuminating or, therefore, useful has been written by way of solution, although much has been produced to show the implications of the existing and potential techniques of the new biology. What I would like to do is to indicate the general categories of ethical questions that these possibilities raise. These categories are frequently ignored, to the added confusion of an often confused subject.

† Professor of Law, Harvard University School of Law.

1. This paper was originally presented at the Symposium sponsored by the John E. Fogarty International Center for Advanced Study in the Health Sciences and the Institute of Society, Ethics and Life Sciences, at Warrenton, Virginia, October, 1971. The paper was delivered in response to a presentation by Lord Charles Kilbrandon. Both papers are reprinted in *ETHICAL ISSUES IN HUMAN GENETICS: GENETIC COUNSELING AND THE USE OF GENETIC KNOWLEDGE* (B. Berkeley, D. Callahan, T. Condliffe, M. Harris & B. Hilton eds. 1973).

DISTRIBUTIVE JUSTICE

The definition of distributive justice given by Aristotle is one I have in mind for this first category. Distributive justice relates to the distribution of undoubted goods in circumstances of scarcity. Thus (1) what constitutes a value is not in dispute. All would choose the goods involved. And (2) the problem therefore arises out of the scarcity, because there is not enough to go around. Thus the issues are easier, because we do not have to worry in this instance about what our definition of values is, only how we distribute them.

Applied to the area of our concern, the problem is who is to benefit from scarce medical resources. This is hardly a new question. It obtains as well in respect to housing, education, or money in general. One special feature is the immediacy and sharpness of some of the distributive choices. Who gets access to an artificial kidney or who gets the organ transplant determines directly and immediately who shall live or die. Whether the choice should be made in terms of deserts—the worthier person or need—or on some random and thus equal basis, poses the traditional dilemma of distributive justice. And, of course, to pass the buck to boards of clergymen, citizens or whoever, is not to resolve the issue, only to leave it to others to resolve. More about this institutionalized evasion of intellectual responsibility will be discussed later.

At a more remote and probably more practical level are questions relating to the allocation of resources between the fancy techniques of modern medicine and the new biology and humbler measures like vaccination, improved diets and the like. Who are the beneficiaries of each kind of expenditure? Are we not perhaps fooling ourselves when we say that future generations in large numbers will benefit by today's exotic research? Is it not more the case that some things are of greater interest to the scientist? Or worse still, is it not possible that those who make the distributional decision know that the humbler measures of public health will not benefit them, while they and their loved ones will be the beneficiaries of wonder cures?

On this question we need not only understand what our distributional norm is, but we also need to work out who, in fact, the beneficiaries of alternative choices may be. Vague references to the welfare of future generations certainly are not enough. Applied to genetic counseling, for instance, we need to know who the beneficiaries of the services provided are, what good is done, and what the alternative uses of resources might be—for instance, improved family planning information generally.

THE PROBLEM OF RIGHTS

The problem of rights—rights of individuals against each other, against the collectivity, even against the public good—is a modern problem. The modern liberal or individualistic concept of personality presupposes a concept of rights which the individual can claim against the socially defined good. This concept of right is heavily involved in the issues which concern us here. Even as to the special question of genetic counseling, we ask whether a person has the right to certain kinds of information, such as the right to have his case treated confidentially, the right to an abortion, or, conversely, the right to marry and have children. From a different angle, we ask whether there is a right to be born, once conceived. In other areas of the new biology, there has been talk of the right to die, the right to be genetically unique, and the right to be the product of normal sexual intercourse and pregnancy.

Two things are striking about such assertions of right. First, rights are usually asserted, so it follows that their possessor can waive their assertion. This is a corollary of the concept of rights as belonging to the individual. Second, if they are worth anything, the rights must be assertable as against the claims of the collectivity. And this is how they are characteristically used. The right to marry and have children need only be asserted if society is claiming that the common good, for eugenic reasons, requires that certain persons not reproduce. The right to confidentiality is asserted in the face of a public need to know. And the mother's right to an abortion is asserted against the unborn child's right to live. This last claim of right must be made on behalf of the unborn child, and for that reason some have thought it an, invalid claim. It is made as well against the possible claim of the public good that unwanted children represent a public liability.

What we are far from having is a comprehensive theory of rights, much less a unified theory which shows how rights and the notion of the public good are functions of some over-all scheme. It is, however, a subject that is occupying the thought of some of the best modern philosophers. And, although there are no breakthroughs in philosophy in the same sense as there are in science, we can expect increasing understanding.

THE FRANKENSTEIN PROBLEM

The issues which the new biology has raised more strikingly than any others have not been the foregoing, since they have always been clearly present in much that we do as individuals and as a society. The

striking problem is that raised by our growing capacity to affect who we will become, to affect what the nature of man will be. Both distributive justice and the question of rights proceed from the assumption that we know what we want, and the question is which of our values will be realized. But eugenics, whether as a result of genetic counseling or of more arcane methods, as well as chemical and electrical intervention with mental processes, may allow us to determine what wants we or our children will have.

These capacities raise different questions. If we can ensure that we or some future person will have certain values, a particular constellation of appetites and preferences, how shall we choose? We are cut adrift completely from the notion that we must try to realize the desires of existing and future beings. We must decide instead what those desires should be.

This requires a deeper conception of value, of the good. Education is the social process most nearly akin to the Frankensteinian possibilities of the new biology. But even there we have always been able to finesse—if we wished—the deep problems, by assuming an innate human nature whose potentialities education was designed to bring to realization. Here we can manipulate human nature itself. But for that we need unavoidably a normative concept of human nature. And, of course, to change nothing is to assume that the status quo is itself normative—an implausible suggestion in light of the evidence of anthropology that man's intelligence, capacities and temperament have themselves been subject to evolutionary forces throughout the millenia.

THE RESPONSES

What I have seen of the attempts to deal with these problems has been only occasionally encouraging. Perhaps the patent need to arrive at what I shall call a philosophical anthropology, *i.e.*, a normative concept of human nature, has naturally suggested the intervention of theologians. Professor Paul Ramsey of Princeton has certainly grasped this kind of problem,² although I must confess I have failed to grasp the structure of his analyses and solutions.

The dominant current of secular Anglo-American ethical philosophy is, I believe, a mixture of utilitarianism and Kantian humanism. Both of these provide only limited help in solving the Frankenstein problem. The deeper philosophy, that derived from Kant, places a primary emphasis on respect for man's rationality and autonomy. This rational

2. P. RAMSEY, *FABRICATED MAN* (1970).

freedom, freedom even from determination by one's own psychological drives, is for Kant the defining feature of man's nature. Clearly this is a normative concept of human nature.

Unfortunately, the applicability of the Kantian ethic to these issues is problematic. Since morals are autonomous from man's contingent nature—his psychological makeup—it would seem that the content of that contingent nature is of no interest to moral philosophy. Perhaps, however, if we could get a better understanding than we now have—or than that which Kant gives us—of freedom of choice and its preconditions, we might discover what developments of the person are most conducive to moral freedom.

The distinguished French biochemist, Jacques Monod, has taken what seems to me to be the other leg on which Kantian ethics stand—rationality—and fashioned from it a criterion for value. In this "*Ethique de la Connaissance*," he proposes as distinctly human whatever enhances man's capacity to understand, truly and objectively, the structure of the universe.³ My difficulty with this standard is that it is incomplete. It gives no way of evaluating the relations persons may have to each other or the kinds of feelings they might have, except as these affect their capacity to obtain scientific knowledge.

Clearly the development of intellectually satisfactory and satisfying value criteria for the development of man's future is a remote and arduous task. It may involve the development of related epistemological and metaphysical structures. All this is a daunting prospect: no immediate results, no resolutions approved by international congresses. Partly out of the anti-intellectualism of modern science and scientists—many of whom are both unconcerned with and impatient of the great philosophical traditions—and partly out of an impatient desire to attain some results, to reach some conclusions, there has grown up what I would call a cult of second-orderism. Rather than try to develop systems of thought about these questions of value, thought is channeled into the fashioning of institutions in which these value choices would be made. In the corrupt version of this, which I shall call conferencism, groups of distinguished persons state their strongly held views, and then the effort is expended in maneuvering for a group consensus. Of course, reasons for the strongly held views are only sketchily presented, if at all, and the task of dissecting the reasoning behind and the evidence for the views is quite out of order.

A more valid version of second-orderism is the design of institutional

3. J. MONOD, *LE HASARD ET LA NECESSITE* 191-95 (1970).

structures such that wide sectors of the public might be involved in the decisions that affect their future and that of coming generations. I say this is more valid because there are well-established norms that affirm the value of wide public involvement in the future of the commonweal. But this only takes us part of the way. Although the power of decision should be widely shared, this says nothing at all about the validity of the decision reached. It is a mindless fallacy to pass from the proposition that the majority should rule to the proposition that what the majority rules is right. We still have the responsibility, as responsible men of intellect, to conclude what we think is right on the merits, and to try to persuade our fellow citizens in the appropriate councils.

Thus, as in the example of genetic counseling, what the rights and obligations are to be should in the end be established by democratic institutions, but surely those institutions must be informed by the understanding of specialists. The development of that understanding, however, is a task for arduous, patient effort, and it is no more easily or casually attained than are the scientific discoveries which opened up these issues.